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Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1959.

No. 413

MORGAN DRIVE AWAY, INC.,

Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, a Labor Organization, and as a representative of all other defendants;

CENTRAL CONFERENCE OF TEAMSTERS OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

JOINT COUNCIL NO. 43 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

CENTRAL STATES DRIVERS COUNCIL OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

INDIANA CONFERENCE OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

JOINT COUNCIL NO. 69 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such, and as a representative of all other defendants;

INDIANA DRIVERS COUNCIL OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such, and as a representative of all other defendants;

LOCAL UNION NO. 364, OF SOUTH BEND, INDIANA, OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such, and as a representative of all other defendants;

LOCAL UNION NO. 691 OF RICHMOND, INDIANA, OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Morgan Drive Away, Inc., Petitioner herein, respectfully petitioning, shows the Court:

### I.

### OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit is not yet printed in the reports and is, therefore, printed in the Appendix to this Petition at

pages 17 *et seq.* The judgment of the Court of Appeals is printed in the Appendix at page 29. The opinion of the United States District Court for the Southern District of Indiana, Indianapolis Division, dated September 29, 1958, is reported at 166 Fed. Supp. 885. The judgments of the District Court are found at App. 222 and App. 254-255.

## II.

## JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit was entered on June 29, 1959. Jurisdiction of this Court is invoked under Title 28, United States Code, Sec. 1254(1).

## III.

## QUESTIONS PRESENTED.

1. Does the International Union and its conferences, joint councils and local unions constitute a single "labor organization" within the meaning of Section 301 of Labor-Management Relations Act of 1947 (29 U. S. C. Section 185, 61 Stat. 156)?

2. Must service of summons be made either upon an acknowledged officer of the International Union or upon one (not an officer) expressly authorized by the International Union to receive service of summons before the same shall constitute service upon the International Union within Section 301 aforesaid?

3. Does service upon an officer of an area conference, joint council or local of the International Union constitute service upon an agent of the International Union within Section 301 (d) of the Labor-Management Relations Act of 1947?

4. Does service upon the officers here of the area conferences, joint councils and local unions of the International Union constitute service upon the International Union where the relationship of the officers served to the International Union is such that there is reasonable assurance that knowledge of the service will be brought home to the International Union and where:

(a) the International Union does business in the forum? or

(b) the individual served with summons performs duties for the International Union in the forum?

## IV.

## STATUTES INVOLVED.

The statute involved is Section 301 of the Labor-Management Relations Act of 1947 (29 U. S. C. Section 185, 61 Stat. 156). This statute is printed in the Appendix to this Petition at pages 30 *et seq.* Section 303 of the Act (29 U. S. C. Section 187, 61 Stat. 158) is involved only so far as it refers to Section 301 aforesaid.

## V.

## STATEMENT OF THE CASE.

On December 2, 1957, Morgan Drive Away, Inc. (Plaintiff), a motor carrier, brought this action for damages for unlawful secondary boycott based on Section 303 of the Labor-Management Relations Act of 1947 (29 U. S. C. Section 187, 61 Stat. 158). The action was brought against the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (International Union), a labor organization composed of all other defendants, naming joint councils, state and area conferences and local unions of the International as such and

each as a representative of all other defendants (Defendants).

The only question presented here is the jurisdiction over the International Union.

Summonses for the Defendants were for each individually and as a representative of all other Defendants and were served upon certain individuals who were officers of local unions, conferences and councils of the International Union.

The District Court dismissed the action as to the International Union (and Joint Council No. 43 of the International Union) for lack of jurisdiction of such defendants. The Court held that individuals served with process were not officers or agents of the International Union within the meaning of Section 301(d) of the Labor-Management Relations Act of 1947 (26 U. S. C., Section 185(d), 61 Stat. 156(d)), nor did service upon such individuals constitute service upon the International Union since none of them were officers of said defendants and were not agents specifically designated to receive service of process.

The United States Court of Appeals for the Seventh Circuit affirmed the District Court decision.

## Organizational Structure of the Teamsters Union.

The Teamsters Union is an unincorporated association operating under a Constitution which provides that the association is "one great labor organization" organized under "one banner" (App. 166, 167).

The International Union consists of the General President, a General Secretary Treasurer, thirteen Vice Presidents and three trustees (App. 137-138).

State and area conferences under the Constitution are "organic bodies within the International Union" (App. 195). They are subject to supervision and control by the

International Union (App. 193-196, 217). All local unions must belong to the state and area conferences (App. 196).

Councils are coordinating and supervising agencies or serve special functions, such as the Central States Drivers Council, which is a "watchdog" of the health and welfare fund for the Central States area (App. 83). The geographical area covered by a particular joint council is at the discretion of the International Union (App. 193). All local unions within this area must belong to and obey the joint council (App. 195). The By-Laws of a particular joint council may not conflict with the International Union's laws and must be approved by the International Union (App. 195). All money and property of a joint council revert to the International Union (App. 207), and all joint councils are subject to trusteeships imposed by the International Union (App. 175). A joint council controls the participation of its local unions in strikes, boycotts, lawsuits, or any serious difficulty (App. 135, 136, 187-188).

The International Union and all subordinate conferences, councils and locals are supported by dues of the members. The International Union controls finances (App. 183-185, 188-189).

All subordinate Teamster organizational groups exist by charter from the International Union (App. 82-83) and are bound by the International Constitution (App. 174, 208).

## Constitution of the Teamsters Union.

The International Constitution provides, among other things pertinent here:

(i) Refusal of local to observe decisions or orders of the General President subjects a local union to suspension or revocation of its charter (App. 173).

(ii) Members, officers, local unions, joint councils and other subordinate bodies may be disciplined for offenses against the International Union (App. 202-206).

(iii) Collective bargaining contracts of a local are subject to approval by a joint council or area conference (App. 210).

(iv) Trusteeship may be imposed on a local or other subordinate body by the General President if he has information which "leads him to believe" that the organization is not being conducted in accordance with the Constitution for the benefit of membership or jeopardizes the interests of the International Union. Trusteeships impose complete control of the affairs and the funds of a local. The trustee is responsible solely to the General President (App. 175-177).

In 1957, over 100 locals are shown to be in trusteeship (App. 154-161).

(v) The International Union has power to:

(a) Interpret and enforce the Constitution of the International Union (App. 173).

(b) Settle and determine grievances and disputes and punish disobedience (App. 173).

(c) Approve or disapprove By-Laws. (App. 174).

(d) Suspend members before a hearing (App. 199).

(e) Conduct trials in respect of members, officers and organizational groups (App. 205); and suspend and revoke charters and deny membership in the International Union (App. 182).

(vi) Penalties for violation of the rules of the International Union are prescribed (App. 198-205).

(vii) The books, documents, contracts, names, monies, funds and property of a conference, council and local belong ultimately to the International Union (App. 178-180, 186, 207-208, 217, 218).

(viii) Funds are transferred from one subordinate organization to another at the direction of the International Union (App. 154, 55-62, 103-111, 123-126). However, such organizations may not assist each other financially without the approval of the International Union (App. 192).

**Interlocking Personnel.**

Service here was made upon Gene San Souci, Norman C. Murrin, Alfred W. Cors and William H. Jones. Each was a resident of the State of Indiana. Their respective relationships with James R. Hoffa and Harold Gibbons, International officers, and with the International Union, its conferences, councils and locals are summarized as follows:

James R. Hoffa in 1957 was a Vice President of the International Union and elected President in that year. He was Chairman of the Central Conference; President of Joint Council No. 43; Vice President of the Central States Drivers Council and President of Local 299 in Detroit (App. 95-97, 109, 138-140). This record shows that funds of Local 299 in Detroit were transferred for the use and benefit of Local 135 in Indianapolis, of which San Souci was President (App. 55-62, 103-111, 123-126).

Harold Gibbons was Vice President of the International Union; Secretary Treasurer of the Central Conference and President of Local Union 688 in St. Louis. This record shows that Mr. Gibbons sent San Souci to Indianapolis in 1952, where he became President of Local 135 by agreement with Beck, then General President (App. 92-97).

Gene San Souci (served here) was: Recording Secretary of Central Conference (Hoffa, Chairman); President of Indiana Conference (all locals Indiana except those in Lake and Porter Counties); President of Joint Council 69 (all locals in Indiana except those in Lake and Porter Counties); and President of Local 135 in Indianapolis (App. 63, 71, 76, 79, 141).

Norman C. Murrin (served here) was: Secretary-Treasurer of the Indiana Conference (San Souci, President); Secretary-Treasurer of the Central States Drivers Council (Hoffa Vice President and Gibbons Secretary-Treasurer); Secretary-Treasurer of Joint Council 69 (San Souci President); delegate Central Conference of Teamsters (Hoffa Chairman, Gibbons Secretary-Treasurer and San Souci Recording Secretary); formerly organizer for the International Brotherhood (App. 114, 119, 120, 121).

Alfred W. Cors (served here) was: President of Local 691 in Richmond; delegate Joint Council No. 69 (San Souci President and Murrin Secretary-Treasurer); delegate Indiana Conference (San Souci President and Murrin Secretary-Treasurer); delegate Central Conference (Hoffa Chairman, Gibbons Secretary-Treasurer, San Souci Recording Secretary); delegate Central States Drivers Council (Hoffa Vice President, Murrin Secretary-Treasurer) (App. 145-147).

William H. Jones (served here) was: Secretary-Treasurer of Local 691, delegate Central Conference of Teamsters (Hoffa Chairman, Gibbons Secretary-Treasurer, San Souci Recording Secretary); delegate Central States Drivers Council (Hoffa Vice President, Murrin Secretary-Treasurer); delegate Indiana Conference (San Souci, President, Murrin Secretary-Treasurer); delegate Joint Council 69 (San Souci President, Murrin Secretary-Treasurer) (App. 147).

No International officer is an Indiana resident (App. 137-138).

## VI.

## ARGUMENT.

The District Court held that it did not have jurisdiction over the person of the defendants, International Union and Joint Council No. 43, as no summons was served upon any of their acknowledged officers or agents and that they had not voluntarily submitted to such jurisdiction (App. 251-252). The Circuit Court of Appeals affirmed for the same reason.

This petition concerns itself only with the question of jurisdiction over the International Union.

Summons for the defendants, including the defendants in question, was for each individually and as representative of all other defendants and was served upon certain individuals who held various positions with the subordinate area conferences, joint councils and local unions of the International Union but who were not specifically designated as officers or agents of the International Union.

Petitioner contends that the decisions and judgments of the District Court and the Circuit Court of Appeals are in error and should be reversed for the following reasons:

### 1.

### Construction of Section 301.

The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court in that it has held that service of process on a labor organization under Section 301 of the Labor-Management Relations Act of 1947, 29 U. S. C., Section 185, is inadequate unless made upon an acknowl-

edged officer of the labor organization or upon one expressly authorized to receive service of process by the labor organization.

Subsections (c), (d) and (e) of Section 301 of the Labor-Management Relations Act of 1947 (29 U. S. C., Section 185, 61 Stat. 156) are incorporated by reference into Section 303 of said Act (29 U. S. C., Section 187, 61 Stat. 158), upon which Petitioner's action below is based and read as follows:

> "(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.
>
> "(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.
>
> "(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling (June 23, 1947, c. 120, Title III, Sec. 301, 61 Stat. 156)."

While none of the individuals served with summons were specifically designated by the International Union as its officers or agents, such persons were designated officers and agents of conferences, councils and locals of the International Union. The record establishes the tight operation of the International Union through its conferences and councils into which all locals are locked by the International constitution. All are so dominated by the Inter-

national Union that it constitutes, as the constitution proclaims, a single labor organization, within the meaning of Section 301 aforesaid. Consequently, service of summons here secured jurisdiction over the International Union.

This issue requires a construction of Section 301. The District Court and the Circuit Court of Appeals read Section 301 as requiring service of summons upon expressly authorized officers or agents. Petitioner reads the statute, particularly subsection (e) thereof, as clearly indicating that jurisdictional requirements so far as labor unions are concerned, are to be the same as any other organization or corporation provided the requirements set forth in *International Shoe Co.* v. *Washington* (1945), 326 U. S. 310, 90 L. Ed. 95, are satisfied. To construe the statute otherwise would not only do damage to its language but would also condone a double standard, one for corporations and the other for unincorporated associations.

2.

**Conflict With the Principle of International Shoe Co. Case.**

The Circuit Court of Appeals has decided a federal question in a way probably in conflict with an applicable decision of this Court in that it has held that the principle of *International Shoe Co.* v. *Washington* (1945), 326 U. S. 310, 90 L. Ed. 95, is not applicable to this unincorporated labor organization.

In *International Shoe Co.* v. *Washington* (1945), 326 U. S. 310, 90 L. Ed. 95, this Court held that service of summons was sufficient to bind a non-resident corporation if the corporation had a reasonable connection with the forum and the person served with summons bore such relationship to the non-resident defendant that there was rea-

sonable assurance that the service of summons would be brought home to the non-resident defendant.

The record in this case establishes that the International Union is engaged in union business in Indiana. Its contacts with the forum are substantial and continuous. It collects dues there (App. 102, 151); it operates trusteeships there (App. 93, 157); it maintains organizers there (App. 119); it supervises union activity there (App. 135-136); it has the protection of the laws of the forum; it is clearly amenable to suit there under the principle of the *International Shoe Co.* case because the persons served were representing and acting for International Union in Indiana and there was reasonable assurance that service of summons upon any of them would be brought home to the International Union.

3.

**Conflict in the Circuits.**

The Circuit Court of Appeals has rendered a decision in conflict with the decisions of other Circuit Courts of Appeals on the same matter in that it has decided the issue of the adequacy of service of process on the defendant here in conflict with the principle decided in *Claycraft Co. v. United Mineworkers of America* (Cir. 6, 1953), 204 Fed. (2d) 600, and the principle decided in *Operative Plasterers' and Cement Finishers' International Association of the United States and Canada v. Case* (Cir. D. C., 1937), 93 Fed. (2d) 56.

In *Claycraft Co. v. United Mineworkers of America* (Cir. 6, 1953), 204 Fed. (2d) 600, the Sixth Circuit Court of Appeals held that service of process on the Regional Director of District 50 of the United Mineworkers of America, constituted service upon the International Union under Section 301 aforesaid since District 50 was merely a part

of the International Union and an agency through which it carried out its work.

The record in this case shows that the area conferences, joint councils and local unions are part of the International Union and agencies through which it carries on its work in Indiana. The picture which emerges of the International Union from this record is that of an unincorporated labor organization in the United States and Canada asserting jurisdiction over all transport and other related businesses, wherein the ultimate power in respect of discipline, membership, officers, grievances, disputes, business and finance lies with the International Union. Under the principle of the *Claycraft Co.* case, service on the individual officers of a subordinate group binds the International Union.

In *Operative Plasterers' and Cement Finishers' International Association of the United States and Canada* v. *Case* (Cir. D. C. 1937), 93 Fed. (2d) 56, the Circuit Court of Appeals for the District of Columbia held that where officers of a local union perform duties for the international union as well as for its local, service on such persons gives jurisdiction over the international union.

"In the instant case, the individuals served with summons were representing and acting for the International Union in Indiana and there was reasonable assurance that service upon any of them would be brought home to the International Union; in fact, the International Constitution requires it (App. 187-188)."

## VII.

## CONCLUSION.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is, in fact, one labor organization. The record in this case refutes the contention that its conferences, councils and locals are separate, independent or autonomous labor unions.

The International and the conferences, councils and locals could have no greater standing than corporate subsidiaries where the corporate veil has been pierced by reason of domination and control. *Detroit Motor Appliance Co. v. General Motors Corp.* (E. D. Illinois 1933), 5 Fed. Supp. 27.

The argument of autonomy has even less meaning in the case of a labor organization.

> "* * * A union local has no more power than that assigned to it by the parent body of which it is a part. It is not like a State in the United States which has inherent powers and retains all authority not delegated to the central government. In a labor union the central body is the custodian of the reservoir of power which it channels into the Locals in such manner and according to such methods as will best serve the entire organization. That power may be shut off when it is abused by a Local (under the constitution and laws which it has agreed to obey) and especially when that abuse may jeopardize the standing, prestige and efficacy of the central body. No far-flung organization, whether it be in the fields of labor, military, industrial or commercial, can achieve its objectives without intelligent direction which is obediently followed by its integral parts. If every local component of a labor union had the right to go its own way, the union would eventually become a disconnected centipede with legs proceeding in a hundred different directions." *Grand Lodge of Brotherhood of Railway and Steamship*

*Clerks, Freight Handlers, Express and Station Employees* v. *Girard Lodge No. 100* (1956), 384 Pa. 248, 265, 120 At. (2) 523, 531.

The fiction of autonomy designed to give sanctuary to the International Union to keep it free from suit in a forum where it is actively conducting its main business must give way in the face of complete domination and control as evidenced by the record here in respect of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WHEREFORE, Petitioner prays that the writ of certiorari issue to the United States Court of Appeals for the Seventh Circuit to review its judgment in this case.

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## APPENDIX A.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

SEPTEMBER TERM, 1958-APRIL SESSION, 1959.

Nos. 12537-12538

MORGAN DRIVE AWAY, INC.,
*Plaintiff-Appellant,*
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ET AL.,
*Defendants-Appellees.*

Appeals from the United States District Court for the Southern District of Indiana, Indianapolis Division.

June 29, 1959.

Before DUFFY, *Chief Judge*, HASTINGS and KNOCH, *Circuit Judges*.

HASTINGS, *Circuit Judge*. This action was brought by the appellant, Morgan Drive Away, Inc.[1] (herein called plaintiff), in the United States District Court for the Southern District of Indiana. The defendants (appellees) are the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called International Union), and the various named joint

1. Plaintiff is an Indiana corporation with its principal place of business in Elkhart, Indiana, and is engaged in the transportation of trailer homes and prefabricated houses as a common carrier.

councils, state and area conferences, and local unions of the International Union as such and each as a representative of all other defendants. Also named as individual defendants in the complaint were Gene San Soucie, Alfred W. Cors and William H. Jones. The district court dismissed the complaint as to these three individual defendants and no question is raised on this appeal as to such dismissal.

The first paragraph of complaint is based on Section 303 of the Labor Management Relations Act of 1947, 29 U. S. C. A. § 187, and seeks damages for an alleged illegal secondary boycott by defendants. The second paragraph of complaint is based on Section 301 of said Act, 29 U. S. C. A. § 185, and seeks damages for breach of contract.

The trial court first entered a judgment dismissing the second paragraph of complaint on the ground that it failed to state a claim upon which relief could be granted. Subsequently, after a trial on the preliminary question of jurisdiction over International Union and Joint Council No. 43, the court then entered a second judgment dismissing the action as to such two defendants on the ground that the court did not have jurisdiction over them, ruling that no legal process or summons was served upon any of their officers or agents, and that they had not voluntarily submitted to such jurisdiction. These two judgments are the subject of Appeal No. 12537 herein.

Later, in order to rule on the admissibility of plaintiff's Exhibits X and Y, the trial court set aside its judgment of dismissal as to the International Union and Joint Council No. 43, ruled that such Exhibits X and Y were inadmissible and re-entered the same judgment of dismissal as to International Union and Joint Council No. 43. This judgment is the subject of Appeal No. 12538 herein. Since the two appeals involve the same action they will be considered here as one appeal.

We have before us appellees' motion to dismiss this appeal. Such motion is denied. Ordinarily, it is true, an order of dismissal as to some of a number of defendants charged to be jointly liable is not a final order and is not appealable when the suit remains pending against the others. *Hardy v. Bankers Life & Casualty Co.*, 7 Cir., 222 F. 2d 827. (1955). We are of the opinion, however, that, on the record before us, the jurisdictional question presented to and ruled upon by the trial court in the preliminary trial, held upon motion of appellees, goes to the heart of the instant suit; and we hold that that order of dismissal is a final and appealable order. Cf. *Higgins* v. *Shenango Pottery Company*, 3 Cir., 256 F. 2d 504 (1958). Indeed, the plaintiff's basic contention is that the suit is brought against one Union, of which those defendants served, the International Union and Joint Council No. 43 are constituent parts. We will address ourselves to this question herein. We also hold that the order dismissing the second paragraph of the complaint is final and appealable.

Turning to the merits, errors relied upon arise out of the judgment of dismissal of the second paragraph of complaint, the judgment of dismissal of the entire action as to the International Union and Joint Council No. 43 and the exclusion from the evidence of plaintiff's Exhibits X and Y.

Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, 28 U. S. C. A., the trial court found the facts specially and stated separately its conclusions of law thereon on the issue of jurisdiction over International Union and Joint Council No. 43. These appear in the well-considered memorandum opinion of that court reported at 166 F. Supp. 885, together with the complaint, motions to dismiss and various answers. For the sake

of brevity reference is made to that opinion for such detailed matter.

Subsections (c), (d) and (e) of Section 301 of the Labor Management Relations Act of 1947 are incorporated by reference into Section 303 of the Act, upon which the first paragraph of complaint is based, and read as follows:

> "(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.
>
> "(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.
>
> "(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

The first question presented is whether, under the foregoing applicable statute, the trial court had jurisdiction over the International Union and Joint Council No. 43. Plaintiff's contention on this issue can best be stated by quoting its "Summary of Argument" from its brief:

> "The District Court has jurisdiction of the International Brotherhood of Teamsters and Joint Council No. 43 of the International Brotherhood of Teamsters.
>
> "(a) The International Brotherhood completely dominates and controls the local unions, joint councils and conferences through power over membership, dis-

cipline, officers, grievances, disputes, collective bargaining and all aspects of union business and finance, so that service of summons on any part is sufficient to acquire jurisdiction over the International Brotherhood. Whether the persons served with process and the Teamster organizations of which they are officers and agents are part of the International Brotherhood for the purpose of service of process depends upon the actual relationship between the International Brotherhood, Joint Council No. 43 and the persons and Teamster organizations actually served with process.

"(b) The local unions, conferences and councils perform duties for the International and service upon the officers and representatives thereof constitutes service of summons upon the International Brotherhood and Joint Council No. 43.

"(c) Service upon the officers of locals, conferences and councils of the International Brotherhood satisfies every requirement of reasonable assurance that notice will be brought home to the International Brotherhood and Joint Council No. 43 of the International Brotherhood."

The principal office and headquarters of the International Union is located in Washington, D. C., and that of Joint Council No. 43 is in the State of Michigan. Summons for each of such defendants was for each individually and was served upon one or more of the following as representatives of the other defendants: Gene San Soucie, Alfred W. Cors, William H. Jones and Norman C. Murrin, all residents of the State of Indiana. It is undisputed that the officers and those agents of International Union and Joint Council No. 43 *specifically* designated to receive service of process do not reside in Indiana and were not these four individuals who were served with process. Plaintiff contends, however, that, by reason of the actual relationship between the defendants, the persons served were in fact agents of the two nonresident

defendants; and that it was unnecessary that they be officers or expressly designated agents for process. This necessarily depends upon the actual relationship disclosed by the evidence submitted to the trial court. After hearing the evidence, the court made the following findings with reference to the four individuals served:

"10. Defendant, Gene San Soucie, is a member of Teamster Local Union No. 135; he is the duly elected President of Teamster Local Union No. 135, Joint Council No. 69, and Indiana Conference of Teamsters; he is the Recording Secretary of the Central Conference of Teamsters; he was elected by the members of Teamster Local Union No. 135 as a delegate to Joint Council No. 69, Indiana Conference of Teamsters, Central Conference of Teamsters, Central States Drivers Council and the Convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which Convention was held in October of 1957; he resides at 7005 Westfield Boulevard, Indianapolis, Marion County, Indiana.

"11. Defendant, Alfred W. Cors, is a member of Teamster Local Union No. 691; he is the duly elected President of said local union, and was elected by the members thereof as a delegate from said local to Joint Council No. 69, Indiana Conference of Teamsters, Central Conference of Teamsters, and Central States Drivers Council; he resides at Lawrenceburg, Indiana.

"12. Defendant, William H. Jones, is a member of Teamster Local Union No. 691; he is the duly elected Secretary-Treasurer of said local union, and was elected by the members thereof as a delegate from said local union to Joint Council No. 69, Indiana Conference of Teamsters, Central Conference of Teamsters, Central States Drivers Council, and the Convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which Convention was held in October of 1957; he resides in Richmond, Indiana.

"13. Norman C. Murrin is a member of Teamster Local Union No. 364; he is the duly elected President of Teamster Local Union No. 364, and the duly elected Recording Secretary of the Central States Drivers Council; he was elected by the members of Teamster Local Union No. 364 as a delegate from said local union to Joint Council No. 69, Indiana Conference of Teamsters, Central Conference of Teamsters, Central States Drivers Council and the Convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which Convention was held in October of 1957; he resides at South Bend, Indiana." 166 F. Supp. 885, 894-895.

After setting out various provisions of International Union's constitution the court further found that "these provisions of the Constitution evidence the fact that said affiliated local unions, Joint Councils, State and area Conferences, have constitutional authority to govern themselves and to transact business through their own duly elected agents and representatives; nowhere in the Constitution of the International Union is there any authority granted to the official or representative of any affiliated local union, Joint Council, State or area Conference, with the exception of the Chairman of area conferences, to hold himself out to be an official, representative, or agent of the International Union." (*id.* at 898) This was followed by findings that neither San Soucie, Cors, Jones or Murrin was "an elective official nor an appointive International Representative or 'Organizer' of the International Union, nor has he held himself out to be such official, representative or 'Organizer.'" *Ibid.*

Plaintiff relies heavily on the case of *Clayeraft Co.* v. *United Mine Workers of America*, 6 Cir., 204 F. 2d 600 (1953). That case involved an appeal from an order of the district court quashing service of summons upon the United Mine Workers of America. Claycraft brought suit

against the parent international union under the provisions of the Labor Management Relations Act of 1947. Service of process was upon Daniel Sandy, a regional director of District 50 of the International. The sole issue presented was whether, under the facts of that case, District 50 and the International were separate autonomous entities, or whether District 50 was merely a part of the International and an agency through which it carried on its work. As in the case at bar, the facts were largely not in dispute; the question presented for determination was primarily one of law. The Sixth Circuit was moved to its determination that the service was valid by the fact that *District 50 had no charter or constitution* and its existence depended upon the constitution of the International under which an Administrative Officer was appointed. In the rules of District 50, authorized by the Internatioonal's constitution, it was provided that the Administrative Officer "* * * shall have general and complete supervision over, and administratioon of the affairs of the District * * *[and with] the Secretary-Treasurer, their aides and assistants, shall in all respects, be subject to, and conform with, the Constitution and policies of the International Union." (*id.* at 601-602) Sandy was appointed as Regional Director by International's Administrative Officer, was directly under his supervision, was required to make weekly reports to him of "all activities in connection with his official duties" and served solely at the discretion of the Administrative Officer. Sandy had complete supervision over the local unions which were chartered. The court concluded: "On a consideration of the above provisions * * * District 50 and the International are not separate, autonomous eitities, but * * * District 50 is a part of the International and the agency through which it carries out certain of its work." *Ibid.*

In *Claycraft*, the court, although upholding the service

of summons on the narrow factual grounds there found to exist, cited no authority in support of its position. It was content to refer to two cases, *in which service had been held invalid*, as support for the general proposition that in each case the actual relationship existing between the International and its so-called agent for process must be determined from the facts in such case. *Isbrandtsen Co.* v. *National Marine Engineers' Beneficial Assn*, D. C. S. D. N. Y., 9 F. R. D. 541 (1949), and *Christian* v. *International Ass'n of Machinists*, D. C. E. D. Ky., 7 F. 2d 481 (1925). The court in *Claycraft* distinguished *Isbrandtsen* by pointing out that in that case the "local union was an autonomous entity separate from the National Union * * * [and that] the local union existed by reason of a charter granted it by the National * * *." *Claycraft Co.* v. *United Mine Workers of America*, *supra*, at 602. In the instant case, the record shows that the state and area conferences, joint councils and local unions are, in fact, by constitution, autonomous entities.[2]

Plaintiff also cites *Spica* v. *International Ladies Garment Workers' Union*, 388 Pa. 382, 130 A. 2d 468 (1957) and *Baumgartner's Electric Construction Co.* v. *De Vries*, (S. Dak.) 91 N. W. 2d 633 (1958), on this general proposition. In *Spica*, the Supreme Court of Pennsylvania was concerned with the construction of a Pennsylvania stat-

2. See *Farnsworth & Chambers Co.* v. *Sheet Metal Workers International Association*, D. C. D. N. M., 125 F. Supp. 830 (1954), which involved the same jurisdictional issue as the one before us here. Farnsworth sought damages for unlawful picketing and sued the international union and one of its locals. Summons on the international union, served on the business agent of its local, was quashed as ineffective under Section 301 of the Labor Management Relations Act. The court held that the international and local were each separate and autonomous legal entities; and that there was not a sufficient connection between them to uphold such service. The court considered and distinguished *Claycraft*, as we have done here, and found support in the holding in *Isbrandtsen*.

ute, and in *Baumgartner*, the Supreme Court of South Dakota passed upon the question of *liability* of the international union for the torts of one of its local unions. We are not concerned in this appeal with the question of liability but with one of jurisdiction. We have considered *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1945), and other cases cited by plaintiff, and do not find them controlling on the question presented to us.

Plaintiff urges us to take judicial notice of the facts in the instant case showing that the International Union is "an organization of a very strong national character, ruled strongly, if not despotically, by its national officers." However sympathetic we might be with such a characterization, we cannot justifiably read into Section 301 a meaning not there. If service on a nonresident parent union is to be had through an officer or agent of one of its subordinate entities, then provision for such must be made by Congress.

Where, as here, local labor organizations, affiliates with an international parent union, are autonomous associations, service of process upon their officers or agents is not service "upon an officer or agent" of the international within the meaning of Section 301(d), 29 U. S. C. A. § 185.

We hold that the findings of fact by the trial court to this effect are clearly supported by substantial evidence and that the court applied the correct legal criteria in its conclusion of law that it had no jurisdiction over the person of International Union and Joint Council No. 43, and the action was properly dismissed as to them.

We have not found controlling those cases cited by defendants in which courts have ruled that there is no liability on the part of an international union for the misconduct of its locals, although there is some language

there which might be said to lend support to our holding [3]

Plaintiff's exhibits X and Y, which were held inadmissible by the trial court, were identified as portions of testimony given by James R. Hoffa and Gene San Soucie before the Select Committee of the United States Senate in 1958. The exhibits were not offered for the purpose of impeachment of San Soucie. Hoffa was not subpoenaed as a witness. The relevancy or materiality of the exhibits to the issues on trial was not established. We have examined the exhibits in question and have no difficulty in holding that under no theory advanced by plaintiffs are they competent as evidence in the trial of the preliminary issue of jurisdiction. They were properly excluded by the trial court.

In the second paragraph of complaint plaintiff sought damages for an alleged breach of contract. It appears that about 1951 plaintiff filed an unfair labor practice charge with the National Labor Relations Board against some of the defendants in this case. Subsequently the parties executed a settlement agreement on November 30, 1951 which provided, *inter alia*, that: "The charging party agrees that no further proceedings shall be taken herein, except for action by the unions pursuant to this agreement, so long as the unions are complying herewith and, *effective when the Regional Director is satisfied that the terms of this agreement have been carried out by the unions, requests leave to withdraw the charge herein.*" (Emphasis added.) At the trial of the instant case the

3. See *Mile Branch Coal Co. v. United Mine Workers of America*, D. C. D. D. C., 162 F. Supp. 65 (1958), where Judge Holtzoff said: "The mere fact however, that Districts were constituent bodies embraced within the international union and that locals were constituent bodies embraced within the Districts, does not in and of itself make either the District or the local an agent of the International Union." To the same effect are *United Mine Workers v. Coronado Coal Company*, 259 U. S. 344, 395 (1922) and *United Construction Workers v. Haislip Baking Company*, 223 F. 2d 872 (1955).

parties stipulated that the subject unfair labor practice charge had been withdrawn in due course as provided in the settlement agreement. The complaint charges that in 1957 defendants breached this settlement agreement by their wrongful acts in Richmond, Indiana, with resulting damages to plaintiff.

The trial court held that:

> "[T]he contract was terminated and the obligations and duties of the parties thereto were fully discharged upon the dismissal of the charges before the National Labor Relations Board.
>
> "The contract did not contemplate the labor organizations performing * * * in future and in perpetuity after consummation of the issue of the proceeding before the Board." 166 F. Supp. 885, 890.

The stipulation evidences the fact that the terms of the settlement agreement had been carried out by defendants. If it can be said that the settlement agreement was a contract then it was fully performed by the parties and we fail to see how it can be the basis of the action pleaded in the second paragraph of the complaint. Upon the withdrawal of the charge before the Labor Board the contract was discharged. If, under some theory not made clear to us, the alleged misconduct of defendants in 1957 can breathe life into the agreement made and performed in 1951, then that would be a matter within the jurisdiction of the National Labor Relations Board. Plaintiff concedes it has no cases in support of its contention.

We hold that the settlement agreement was fully performed and the obligations of the parties thereunder were discharged upon dismissal of the charges before the National Labor Relations Board. The trial court did not err in dismissing the second paragraph of complaint upon the ground that it failed to state a claim upon which relief can be granted.

The judgment of the district court is

AFFIRMED.

## APPENDIX B.

Judgments of the Court of Appeal in Nos. 12537-12538 in respect of District Court judgments dated September 29, 1958, and October 28, 1958, respectively, were entered June 29, 1959 and read as follows:

> It is ordered and adjudged by this Court that the said judgment of the said District Court in the cause appealed from be, and the same is hereby, affirmed, in accordance with the opinion of this Court filed this day, with costs.

## APPENDIX C.

### SUBCHAPTER IV—LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT.

§ 185. *Suits by and against labor organizations—Venue, amount, and citizenship.*

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

RESPONSIBILITY FOR ACTS OF AGENT; ENTITY FOR PURPOSES OF SUIT; ENFORCEMENT OF MONEY JUDGMENTS.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

JURISDICTION.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have juris-

diction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

SERVICE OF PROCESS.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

DETERMINATION OF QUESTION OF AGENCY.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, 3:17 p. m., E. D. T., c. 120, Title III, § 301, 61 Stat. 156.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1959

## No. 413

MORGAN DRIVE AWAY, INC.,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, a Labor Organization, and as a representative of all other defendants;

CENTRAL CONFERENCE OF TEAMSTERS OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

JOINT COUNCIL NO. 43 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

CENTRAL STATES DRIVERS COUNCIL OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

INDIANA CONFERENCE OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

JOINT COUNCIL NO. 69 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such, and as a representative of all other defendants;

INDIANA DRIVERS COUNCIL OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such, and as a representative of all other defendants;

LOCAL UNION NO. 364, OF SOUTH BEND, INDIANA, OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such, and as a representative of all other defendants;

LOCAL UNION NO. 691 OF RICHMOND, INDIANA, OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

## BRIEF FOR RESPONDENT IN OPPOSITION


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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1959.

## No. 413

MORGAN DRIVE AWAY, INC.,

Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, a Labor Organization, and as a representative of all other defendants;

CENTRAL CONFERENCE OF TEAMSTERS OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

JOINT COUNCIL NO. 43 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

CENTRAL STATES DRIVERS COUNCIL OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

INDIANA CONFERENCE OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants;

JOINT COUNCIL NO. 69 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such, and as a representative of all other defendants;

INDIANA DRIVERS COUNCIL OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such, and as a representative of all other defendants;

LOCAL UNION NO. 364, OF SOUTH BEND, INDIANA, OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such, and as a representative of all other defendants;

LOCAL UNION NO. 691 OF RICHMOND, INDIANA, OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as such and as a representative of all other defendants.

Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

# BRIEF FOR RESPONDENT IN OPPOSITION.

## I.

## OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit is reported in 268 F. (2d) 871; the opinion of the United States District Court for the South-

ern District of Indiana, Indianapolis Division, is reported in 166 F. Supp. 885.

## II.

## JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit was entered on June 29, 1959. Jurisdiction of this Court is invoked under Title 28, United States Code, Sec. 1254(1).

## III.

## STATUTE INVOLVED.

Section 301 (c. 120, Title III, Sec. 301, 61 Stat. 156; 29 U. S. C., Sec. 185) and Section 303 (c. 120, Title III, Sec. 303, 61 Stat. 158; 29 U. S. C., Sec. 187) are involved herein; these Sections of the statute are printed in the Appendix to this brief commencing at page 31.

## IV.

## QUESTION PRESENTED.

The question presented is whether or not service of summons was made upon an officer or agent of the Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, within the meaning and provisions of Sections 301 and 303 of the Labor Management Relations Act of 1947, as amended.

## V.

## STATEMENT OF THE CASE.

### The Nature of the Case and Its Disposition.

Morgan Drive Away, Inc., the Petitioner herein, was the plaintiff in the District Court, and will be referred to hereinafter as the plaintiff.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Respondent herein, was one of some twelve (12) defendants in the District Court, and will be referred to hereinafter as the defendant; any reference to "defendants" will be taken to mean all twelve (12) defendants.

(References to portions of the record, as printed in the form of the Appendix as filed with the Court of Appeals for the Seventh Circuit by the plaintiff, will be referred to herein as "P. A.")

On December 2, 1957 (P. A. 2), the plaintiff filed its complaint against some twelve (12) defendants, in two "Legal Paragraphs".

The "First Paragraph" (P. A. 6-9) was based on Section 303 of the Labor-Management Relations Act of 1947, as amended (29 U. S. C. Sec. 187; c. 120, Title III, sec. 303, 61 Stat. 158), and sought damages for an alleged secondary boycott by defendants.

The "Second Paragraph" (P. A. 10-11) was based on Section 301 of said Act (29 U. S. C. Sec. 185; c. 120, Title III, sec. 301, 61 Stat. 156), and sought damages for an alleged breach of a "settlement agreement" (P. A. 12-16) executed between some of the defendants and the National Labor Relations Board on November 30, 1951; the plaintiff was the "charging party" in such proceeding before the National Labor Relations Board and also signed said "settlement agreement".

On September 11, 1958, Gene San Soucie, Alfred W. Cors and William H. Jones, as individual defendants, filed a "Motion To Dismiss" (P. A. 49-50) with respect to the "First Paragraph" of the complaint; said "Motion To Dismiss" was sustained by the District Court as shown by a separate entry on September 24, 1958 (P. A. 53-4), and the sustaining of said Motion is also shown in the

"Memorandum Opinion" of the trial court as entered on September 29, 1958 (P. A. 233).

Also, on September 11, 1958, Gene San Soucie, Alfred W Cors, and William H. Jones, as individual defendants, filed a "Motion To Dismiss" (P. A. 50-1) as to the "Second Paragraph" of the complaint; said "Motion To Dismiss" was sustained by the trial court as shown by a separate entry on September 24, 1958 (P. A. 53-4), and the sustaining of said Motion is also shown in the "Memorandum Opinion" of the trial court as entered on September 29, 1958 (P. A. 233).

The plaintiff did not assert in the Court of Appeals any error by the District Court as to the sustaining of the "Motions To Dismiss" filed by said individual defendants.

On January 15, 1958 (P. A. 3), the defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, along with other defendants filed an Answer (P. A. 40-42); and, in the "Third Defense" and "Fourth Defense" thereof (P. A. 41 as to the First Paragraph of Complaint, and P. A. 42 as to the Second Paragraph of Complaint), said defendant (International Brotherhood of Teamsters) in substance alleged that the District Court had no jurisdiction over it as no process or summons had been served upon any officer or agent or representative thereof and the defendant had in no way or manner voluntarily submitted itself to the jurisdiction of the court.

On August 26, 1958 (P. A. 3), said defendant, along with other defendants, filed a "Motion For Preliminary Hearing (P. A. 42-3), and requested, among other things, a Preliminary Hearing on the "Third Defense" and "Fourth Defense"; such "Motion For Preliminary Hearing" was sustained on September 24, 1958 (P. A. 53-4).

The "Preliminary Hearing" was conducted on September 24th and 25th of 1958 (P. A. 53-4).

The District Court rendered a "Memorandum Opinion" (P. A. 224-52; 166 F. Supp. 885) on September 29, 1958 (P. A. 4), made "Findings of Fact" (P. A. 238-51) pursuant to Rule 52 of the Rules of Civil Procedure, and "Conclusions of Law" (P. A. 251-2), and, on September 29, 1958 (P. A. 4), the District Court entered a judgment (P. A. 222) sustaining the "Third Defense" and "Fourth Defense" of the defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and dismissed the action as to said defendant.

On August 26, 1958, the defendant, Joint Council No. 43, filed a "Motion To Dismiss" with affidavit attached thereto (P. A. 44-46) alleging in substance that the District Court had no jurisdiction over it as no process or summons had been served upon an officer or agent of Joint Council No. 43 and the defendant had in no way or manner voluntarily submitted itself to the jurisdiction of the court; said "Motion To Dismiss" was sustained by the District Court on September 24, 1958 (P. A. 223); thereafter, and apparently as a result of the evidence introduced at the "Preliminary Hearing" on September 24th and 25th of 1958, on the "Third Defense" and "Fourth Defense" of the International Brotherhood of Teamsters, the District Court believed it should rescind the order of September 24, 1958, as made on the "Motion To Dismiss" of Joint Council No. 43 (P. A. 223), so that the evidence heard at said "Preliminary Hearing" could be considered prior to a ruling on the "Motion To Dismiss" of Joint Council No. 43 (P. A. 223); therefore, the ruling of the District Court on the "Motion To Dismiss" of Joint Council No. 43 was rescinded (P. A. 223), and, the District Court then proceeded to consider also the evidence, as introduced at the "Preliminary Hearing", in ruling on the "Motion To Dismiss" of Joint Council No. 43 (P. A. 223-4, 235). And, as mentioned above, on September 29, 1958, the District

Court thereupon sustained the "Motion To Dismiss" of Joint Council No. 43 and entered a judgment accordingly (P. A. 223-4).

The judgment of dismissal (P. A. 222) by the District Court as to the defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the judgment of dismissal (P. A. 223-4) as to the defendant, Joint Council No. 43, were assigned as error by the plaintiff in the Court of Appeals.

On January 15, 1958, certain defendants, to-wit: International Brotherhood of Teamsters, Indiana Conference of Teamsters, Joint Council No. 69, Indiana Drivers Council, Local Union No. 364, Local Union No. 691; Gene San Soucie, Alfred W. Cors, and William H. Jones (P. A. 40-1), filed an Answer (P. A. 40-42), which among other things, alleged as a "Second Defense", that the Second Paragraph (P. A. 10-11) of the complaint failed to state a claim against said defendants upon which relief could be granted (P. A. 41). On September 24, 1958, certain other defendants, to-wit: Central Conference of Teamsters, and Central Drivers Council (P. A. 52) filed an Answer, which among other things, alleged as an "Additional Defense" that the "Second Paragraph" of the complaint failed to state a claim against said defendants upon which relief could be granted (P. A. 52).

On September 24, 1958, the District Court sustained the "Second Defense" of said defendants as filed on January 15, 1958, to the "Second Paragraph" of the complaint (P. A. 53-4, specifically the fifth and sixth lines of item 3 on page 54).

Also on September 24, 1958, the District Court sustained the "Additional Defense" of said defendants as filed on September 24, 1958, to the "Second Paragraph" of the complaint (P. A. 53-4, specifically the first three lines of item 2 on page 53).

The plaintiff assigned as error in the Court of Appeals the action of the District Court, as above outlined, on September 24, 1958, with respect to the "Second Paragraph" of the complaint.

The plaintiff also assigned as error in the Court of Appeals, the sustaining by the District Court (P. A. 255) of an objection by the defendants to the offer into evidence of plaintiff's Exhibit X (P. A. 258-9) and Exhibit Y (P. A. 268-288) which consisted of portions of testimony before the McClellan Committee; said Exhibits were offered into evidence during the course of the "Preliminary Hearing".

The Court of Appeals concluded, among other things, that the District Court had correctly held (a) that service of summons had not been made upon an officer or agent of the International Brotherhood of Teamsters or upon an officer or agent of Joint Council No. 43, and therefore, the court did not have jurisdiction over said two defendants, (b) that the "Second Paragraph" of the complaint failed to state a claim upon which relief could be granted, and (c) that certain exhibits containing portions of testimony before the McClellan Committee had been properly excluded (268 F. (2d) 871).

## Concise Statement of the Facts.

Plaintiff is a corporation organized under and existing by virtue of the laws of the State of Indiana.

Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is an international labor organization, a voluntary unincorporated association, which has many local unions affiliated with it, and said local unions are located in various parts of the United States, Canada, and the territories of the United States (P. A. 73, 93, 97, 99, 166-8); also affiliated

with said International Union are various Joint Councils which are made up of affiliated local unions in a city, area, or state (P. A. 70-2, 74-5, 193-5); also affiliated with said International Union are Conferences, which are organized on a state or larger area basis, and affiliated with said Conferences are various local unions in a particular state or area composed of several states, or an area in Canada or the territories of the United States (P. A. 70-2, 74, 76-7, 81, 84, 195-7); the principal office and headquarters of said defendant is located at 25 Louisiana Avenue, N. W., Washington, D. C. (P. A. 85, 137); defendant operates and functions under a written document entitled Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 99-100, 166-208); it has as its officers, a General President, General Secretary-Treasurer, thirteen (13) Vice-Presidents, and three (3) Trustees, all of which have been elected at a Convention composed of delegates from the various local unions affiliated with the defendant (P. A. 73, 84-5, 137).

Central Conference of Teamsters is a labor organization, a voluntary unincorporated association (P. A. 97, 99); affiliated with it are all teamster local unions in its area (P. A. 71-2, 99-100); it operates and functions under a written document entitled Constitution of the Central Conference of Teamsters (P. A. 71-2, 195-7); it has a Charter from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 71-2, 82-3); it has as an officer, a Chairman, who is appointed by the General President of the International Brotherhood of Teamsters (P. A. 196); it also has as officers, a Vice-Chairman, Secretary-Treasurer, and Recording Secretary, all of whom are elected by the delegates of the various local unions affiliated with it (P. A. 77, 195-7); said officers together with any International Vice-President or Vice-Presidents located in the area, constitute the Executive Board thereof (P. A. 77, 195-7).

Central States Drivers Council is a labor organization, a voluntary unincorporated association (P. A. 93, 97, 99); affiliated with it are Teamster local unions in its area (P. A. 82, 83-4); it has a Charter from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 82-3); it has officers who are elected by delegates from the various local unions affiliated with it (P. A. 118, 143).

Indiana Conference of Teamsters is a labor organization, a voluntary unincorporated association (P. A. 93, 97, 99); affiliated with it are all teamster local unions in the state of Indiana, except those located in Lake and Porter Counties (P. A. 79); it operates and functions under a written document entitled By-Laws of Indiana Conference of Teamsters (P. A. 74); it has a Charter from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 72); it has officers who are elected by delegates from the various local unions affiliated with it (P. A. 79).

Joint Council No. 69 is a labor organization, a voluntary unincorporated association (P. A. 93, 97, 99); affiliated with it are all Teamster local unions in the State of Indiana, except those located in Lake and Porter Counties (P. A. 79); it operates and functions under a written document entitled By-Laws of Joint Council No. 69 (P. A. 74); it has a Charter from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 72); it has officers who are elected by delegates from the various local unions affiliated with it (P. A. 74).

Teamster Local Union No. 691 is a labor organization, a voluntary unincorporated association (P. A. 93, 97, 99); it has its principal office and place of business at Richmond, Indiana (P. A. 127), and is composed of individual members in that area (P. A. 149); it has a Charter from the

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 129-130); it has officers who are elected by the members thereof (P. A. 129); it holds regular meetings of its members (P. A. 129); it has a bank account from which monies may be drawn by three officers thereof (P. A. 128); it engages in collective bargaining and negotiates contracts for and on behalf of its members, submits negotiated contracts to its members for ratification and approval, and enters into contracts with employers for and on behalf of its members (P. A. 129); it collects initiation fees and dues from its members, and forwards a per capita tax to Joint Council No. 69, Indiana Conference of Teamsters, Central Conference of Teamsters, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 149-151).

Teamster Local Union No. 364 is a labor organization, a voluntary unincorporated association (P. A. 93, 97, 99); it has its principal office at South Bend, Indiana (P. A. 144), and is composed of individual members in that area (P. A. 116); it has a Charter from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 115); it has officers who are elected by the members thereof (P. A. 114-15, 144); it holds regular meetings of its members (P. A. 116); it has several bank accounts from which monies may be drawn by two officers thereof (P. A. 116-7); it engages in collective bargaining and negotiates contracts for and on behalf of its members, submits negotiated contracts to its members for ratification and approval, and enters into contracts with employers for and on behalf of its members (P. A. 117); it collects initiation fees and dues from its members, and forwards a per capita tax to Joint Council No. 69, Indiana Conference of Teamsters, Central Conference of Teamsters, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 117).

Teamster Local Union No. 135 is a labor organization, a voluntary unincorporated association (P. A. 93, 97, 99); it has its principal office and place of business at Indianapolis, Indiana (P. A. 63), and is composed of individual members in that area (P. A. 65); it has a Charter from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 69); it has officers who are elected by the members thereof (P. A. 64-65); it holds regular meetings of its members (P. A. 65); it has several bank accounts from which monies may be drawn by two officers thereof (P. A. 64-65); it engages in collective bargaining and negotiates contracts for and on behalf of its members, submits negotiated contracts to its members for ratification and approval, and enters into contracts with employers for and on behalf of its members (P. A. 67-8); it collects initiation fees and dues from its members, and forwards a per capita tax to Joint Council No. 69, Indiana Conference of Teamsters, Central Conference of Teamsters, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 102).

Gene San Soucie is the duly elected President of Teamster Local Union No. 135 (P. A. 63), Joint Council No. 69 (P. A. 79), Indiana Conference of Teamsters (P. A. 79); and the duly elected Recording Secretary of the Central Conference of Teamsters (P. A. 76); he is a delegate from Teamster Local Union No. 135 to Joint Council No. 69 (P. A. 71), Indiana Conference of Teamsters (P. A. 71), and Central Conference of Teamsters (P. A. 76-7); he resides at 7005 Westfield Boulevard, Indianapolis, Marion County, Indiana (P. A. 62).

Alfred W. Cors is the duly elected President of Local Union No. 691 (P. A. 127-8), and was elected by the members thereof as a delegate from said local to Joint Council No. 69 (P. A. 133), Indiana Conference of Teamsters (P. A.

132), Central Conference of Teamsters (P. A. 132) and Central States Drivers Council (P. A. 132); he resides at Lawrenceburg, Indiana (P. A. 127).

William H. Jones is the duly elected Secretary-Treasurer of Local Union No. 691 (P. A. 128), and was elected by the members thereof as a delegate from said local union to Joint Council No. 69 (P. A. 133), Indiana Conference of Teamsters (P. A. 132), Central Conference of Teamsters (P. A. 132), Central States Drivers Council (P. A. 132), and the Convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (P. A. 132), which Convention was held in October of 1957; he resides in Richmond, Indiana (P. A. 145-8).

Norman C. Murrin is the duly elected President of Teamster Local Union No. 364 (P. A. 144), the duly elected Secretary-Treasurer of the Indiana Conference of Teamsters (P. A. 79-80, 118) and Joint Council No. 69 (P. A. 79-80, 118), and the duly elected Recording Secretary of the Central States Drivers Council (P. A. 121); he was elected by the members of Teamster Local Union No. 364 as a delegate from said local Union to Joint Council No. 69 (P. A. 71, 79, 80, 118), Indiana Conference of Teamsters (P. A. 71, 79, 80, 118), Central Conference of Teamsters (P. A. 71, 79, 80), and Central States Drivers Council (P. A. 71, 79, 80, 118); he resides at South Bend, Indiana (P. A. 114).

Joint Council No. 43 is composed of teamster local unions domiciled in the State of Michigan (P. A. 45); Local Union No. 364 is located in South Bend, Indiana, and pays no per capita tax to Joint Council No. 43 (P. A. 45); Norman C. Murrin does not now hold and never has in the past held any office in Joint Council No. 43; Norman C. Murrin is not now nor has he been at any time in the past an officer or agent of Joint Council No. 43; Norman C. Murrin

has never been authorized or designated by Joint Council No. 43 as its agent for the service of process (P. A. 45).

Gene San Soucie is not an elective or appointive officer of the International Brotherhood of Teamsters, and he is not an International Representative or Organizer as designated in the Constitution of the International Brotherhood of Teamsters, and, he has not held himself out to be such an official; he has never been authorized or appointed by the International Brotherhood of Teamsters to accept or receive service of process or summons as an agent of the International Brotherhood of Teamsters in any proceeding (P. A. 84-86).

Norman C. Murrin was an International Organizer of the International Brotherhood of Teamsters from June, 1945 until September of 1947 (P. A. 119); Norman C. Murrin is not an elective or appointive officer of the International Brotherhood of Teamsters, and he is not now an International Representative or Organizer as designated in the Constitution of the International Brotherhood of Teamsters, and he has not held himself out to be such an official since September of 1947; he has never been authorized or appointed by the International Brotherhood of Teamsters to accept or receive service of process or summons as an agent of the International Brotherhood of Teamsters in any proceeding (P. A. 118-119).

Alfred W. Cors is not an elective or appointive officer of the International Brotherhood of Teamsters, and he is not an International Representative or Organizer as designated in the Constitution of the International Brotherhood of Teamsters, and he has not held himself out to be such an official; he has never been authorized or appointed by the International Brotherhood of Teamsters to accept or receive service of process or summons as an agent of the International Brotherhood of Teamsters in any proceeding (P. A. 130-131).

William H. Jones is not an elective or appointive officer of the International Brotherhood of Teamsters, and he is not an International Representative or Organizer as designated in the Constitution of the International Brotherhood of Teamsters, and, he has not held himself out to be such an official; he has never been authorized or appointed by the International Brotherhood of Teamsters to accept or receive service of process or summons as an agent of the International Brotherhood of Teamsters in any proceeding.

The Constitution of the International Brotherhood of Teamsters prescribes, *inter alia*, the manner in which the business of the International Brotherhood of Teamsters shall be transacted, the persons who may transact such business, and the methods of selecting or appointing the persons who may transact such business (P. A. 99-100, 166-200).

The business of the International Brotherhood of Teamsters, according to its Constitution, is transacted by the General President, the General Secretary-Treasurer, fourteen (13) Vice-Presidents, and three (3) Trustees, all of whom are elected officials, and also by International "organizers", who are appointed by the General President (P. A. 99-100, 166-208).

The Constitution of the International Brotherhood of Teamsters prescribes a number of rules of conduct and procedure applicable to individual members, affiliated local unions, affiliated Joint Councils, and affiliated State and area Conferences, and vests in the International Union in given instances a degree of authority or control over the said individual members, affiliated local unions, affiliated Joint Councils and Conferences; these provisions of the Constitution evidence the fact that said affiliated local unions, Joint Councils, state and area Conferences, have constitutional authority to govern themselves and to

transact business through their own duly elected agents and representatives; nowhere in the Constitution of the International Union is there any authority granted to the official or representative of any affiliated local union, Joint Council, State or area Conference, with the exception of the Chairman of area conferences, to hold himself out to be an official, representative, or agent of the International Union (P. A. 99-100, 166-208).

Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America was allegedly served by leaving a copy of the summons and complaint with Alfred W. Cors in Richmond, Indiana (P. A. 27) and with Gene San Soucie in Indianapolis, Indiana (P. A. 35).

Joint Council No. 43 was allegedly served by leaving a copy of the summons and complaint with Norman C. Murrin at South Bend, Indiana (P. A. 33).

Central Conference of Teamsters was allegedly served by leaving a copy of the summons and complaint with Norman C. Murrin at South Bend, Indiana (P. A. 32).

Central States Drivers Council was allegedly served by leaving a copy of the summons and complaint with Gene San Soucie at Indianapolis, Indiana (P. A. 41).

Indiana Conference of Teamsters was allegedly served by leaving a copy of the summons and complaint with Gene San Soucie (P. A. 31).

Joint Council No. 69 was allegedly served by leaving a copy of the summons and complaint with Gene San Soucie (P. A. 39).

Teamster Local Union No. 364 was allegedly served by leaving a copy of the summons and complaint with Norman C. Murrin, at South Bend, Indiana (P. A. 34).

Teamster Local Union No. 691 was allegedly served by

leaving a copy of the summons and complaint with Alfred W. Cors, at Richmond, Indiana (P. A. 29).

Gene San Soucie was also served "as a member and or representative of all other defendants" by leaving a copy of the summons and complaint with him at Indianapolis, Indiana (P. A. 37).

Alfred W. Cors was also served "individually and as a member and or representative of all other defendants" by leaving a copy of the summons and complaint with him at Richmond, Indiana (P. A. 28).

William H. Jones was served "individually and as a member and or representative of all other defendants" by leaving a copy of the summons and complaint with him at Richmond, Indiana (P. A. 30).

Each defendant and labor organization and each individual defendant was sued as a representative of all other defendants (P. A. 23-26).

## VI.

## SUMMARY OF ARGUMENT.

The Petition herein concerns itself with only one question, that is, whether the District Court had jurisdiction of the defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

The cause of action of the plaintiff was predicated on Sections 301 and 303 of the Labor-Management Relations Act of 1947, as amended; subsection (d) of Section 301 provides that service of summons upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization; service of summons in the instant proceeding was not made upon an officer or agent of the defendant, International Brotherhood of Teamsters, and therefore the District Court did not have jurisdiction of said defendant.

## VII.

## ARGUMENT.

### THE DISTRICT COURT DID NOT HAVE JURISDICTION OF THE DEFENDANT.

#### 1.

#### Construction of Section 301.

The plaintiff contends in its Petition For Certiorari that the issue herein requires a construction of Section 301 of the Labor-Management Relations Act of 1947, as amended.

As admitted by the Petitioner, its complaint was based primarily on Section 303 of the Act and subsection (b) thereof reads as follows:

> "303(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit." c. 120, Title III, Sec. 303 (b), 61 Stat. 158; 29 U. S. C., Sec. 187 (b).

Subsection (d) of Section 301 of the Act expressly provides as follows:

> "301(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization." c. 120, Title III, Sec. 301 (d), 61 Stat. 156; 29 U. S. C. Sec. 185 (d).

In an effort to construe Section 301 of the Act, the Petitioner refers to the case of *International Shoe Com-*

*pany* v. *State of Washington, et al.* (1945) 326 U. S. 310; 66 S. Ct. 154; 90 L. ed. 95; in the *International Shoe Company* case, it was assigned as error that certain statutes infringed upon the due process clause of the Fourteenth Amendment and the Commerce Clause; and, the State of Washington proceeded against the International Shoe Company under such statutory provisions, which among other things, authorized the Commissioner under the Unemployment Compensation Act of the State of Washington "to issue an order and notice of assessment of delinquency contributions upon prescribed personal service of the notice upon the employer if found within the State, or if not so found, by mailing the notice to the employer by registered mail at his last known address." The *International Shoe Company* case is not at all similar to the one at bar, for it can be readily noted that the above statutory provisions of the State of Washington specifically provided for a special manner of service of process, which was apparently followed by the State of Washington in bringing into court the International Shoe Company.

With respect to the *International Shoe Co.* case, the Court of Appeals for the Seventh Circuit (268 F. 2d 871) at page 877, tersely stated the following:

> "* * *. We have considered *International Shoe Co.* v. *State of Washington*, 1945, 326 U. S. 310, 66 S. Ct. 154, 90 L. Ed. 95, and other cases cited by plaintiff, and do not find them controlling on the question presented to us."

The Petitioner, on page 11 of its Petition, appears to rely primarily upon Sec. 301 (e) of the Act to support its position that proper service of summons was made upon the International Brotherhood of Teamsters; subsection (e) of Sec. 301, reads as follows:

> "Sec. 301 (e) For the purposes of this section, in determining whether any person is acting as an 'agent'

of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." c. 120, Title III, Sec. 301 (e), 61 Stat. 156; 29 U. S. C. 185(e).

Subsection (e) of Sec. 301 of the Act appears to be directed more to the question of *liability* of a principal for the acts of an agent, rather than to the question of *jurisdiction*, which latter item is the matter now involved before the Court.

On this particular point, the Court of Appeals (268 F. 2d 871) at page 877, stated the following:

"* * *. We are not concerned in this appeal with the question of liability but with one of jurisdiction. * * *.

"Plaintiff urges us to take judicial notice of the facts in the instant case showing that the International Union is 'an organization, ruled strongly, if not despotically, by its national officers.' However sympathetic we might be with such a characterization, we cannot justifiably read into Section 301 a meaning not there. *If service on a nonresident parent union is to be had through an officer or agent of one of its subordinate entities, then provision for such must be made by Congress.* (Our italics.)

"Where, as here, local labor organizations, affiliated with an international parent union, are autonomous associations, service of process upon their officers or agents is not service 'upon an officer or agent' of the international within the meaning of Section 301(d). 29 U. S. C. A. Sec. 185."

2.

**Conflict With a Decision of This Court.**

Petitioner also attempts to rely on the case of *International Shoe Co.* v. *Washington* (1945), 326 U. S. 310, 66 S. Ct. 154, 90 L. ed. 95 on still another basis; that is, Petitioner states, but in an obviously hesitant manner, that

the Court of Appeals has decided a Federal question "in a way probably in conflict with an applicable decision of this Court," referring specifically to the *International Shoe Co.* case.

What has been heretofore stated in this brief concerning the *International Shoe Co.* case, adequately and clearly disposes of this point.

3.

**Conflict in the Circuits.**

Petitioner asserts that the Court of Appeals has rendered a decision in conflict with the decisions of the Court of Appeals in two other circuits, *i.e.*, the Sixth Circuit and the Circuit of the District of Columbia; Petitioner relies upon two cases to support its position, to-wit: *Claycraft Co. v. United Mine Workers of America* (C. A. 6, 1953), 204 F. (2d) 600; and *Operative Plasterers' and Cement Finishers' International Association of the United States and Canada v. Case* (*C. A. D. of C.* 1937), 93 F. (2d) 56.

The decision of the Court of Appeals in the instant case is not in conflict with the decisions in the Sixth Circuit or the Circuit for the District of Columbia.

In the *Claycraft* case, Daniel Sandy, Director of Region 34 of District 50 of the United Mine Workers of America, was served with summons and the question on appeal arose by reason of a ruling on a "Motion to Quash" the service of the summons upon the United Mine Workers of America; the court set forth in its opinion Section 301(d), 61 Stat. 156, 29 USCA 185(a); from the standpoint of the facts in said case and the facts in the instant case, perhaps it should be pointed out that the court in the *Claycraft* case mentioned in its opinion, among other things, commencing at page 601, the following:

"District 50 has no constitution. * * *

* * * * * *

"Under Article XX of the Constitution of the International, an Administrative Officer is appointed.

"In the rules of District 50, it is provided:

* * * * * *

" 'Section 1. The Administrative Officer of the District shall be authorized to appoint Regional Directors, who shall have supervision of Local Unions within the region assigned to each, and shall report directly to the Administrative Officer on all matters of policy and organizational activities. Regional Directors shall be charged with the duty to supervise organizing activities within the region, assist, on behalf of the Local Unions, in the negotiations of wage agreements; * * * and shall make a full and complete written report to the Administrative Officer of the District at the end of each calendar week, setting out all activities in connection with his official duties during that week. * * * Regional Directorships may be established or abolished at the discretion of the Administrative Officer of the District.'

"From the foregoing, the main consideration that stands out above everything else is the fact that the Administrative Officer operates District 50 for the International. District 50 has no charter. * * *

"The regional directors of District 50 are appointed by the Administrative Officer and must make weekly written reports directly to such Officer on all matters of policy and organizational activities. * * *

" '* * *. All local unions must be chartered by the International union. Thus, although every local union must have a charter from the International, District 50, through which these important organizational activities are carried on, has no charter."

The instant case may be distinguished from the *Clayeraft* case, at least, in the following conspicuous respects:

(a) Charters have been issued by the International Brotherhood of Teamsters to (1) Teamster Local Union

No. 691, (2) Teamster Local Union No. 364, (3) Teamster Local Union No. 135, (4) Joint Council No. 69, (5) Indiana Conference of Teamsters, (6) Central Conference of Teamsters, (7) Central States Drivers Council, (8) Joint Council No. 43;

(b) The officers of Local 691, Local 364, Local 135, Joint Council No. 69, Indiana Conference of Teamsters, Central States Drivers Council, are elected and not appointed;

(c) The Chairman of the Central Conference of Teamsters is appointed by the President of the International Brotherhood of Teamsters, but the Vice-Chairman, Secretary-Treasurer, and Recording Secretary are elected by the delegates thereof, and not appointed;

(d) The *Claycraft* case pointed out that "District 50 has no constitution", but the evidence shows that the Central Conference of Teamsters does have a constitution, and that the Indiana Conference of Teamsters, Joint Council No. 69, and Joint Council No. 43 function under their own separate by-laws and or rules.

In the *Claycraft* case, Daniel Sandy was appointed a Director of Region 34 of District 50 of the United Mine Workers of America and it was provided that he "shall report directly to the Administrative Office on all matters of policy and organizational activities * * * and shall make a full and complete written report to the Administrative Officer of the District at the end of each calendar week, setting out all activities in connection with his official duties during that week. * * * Regional Directorships may be established or abolished at the discretion of the Administrative Officer of the District." The Administrative Officer, who appointed Daniel Sandy as Director of Region 34, was himself appointed as such, pursuant to a constitu-

tional provision of the United Mine Workers; in other words, the International Union appointed and/or employed, pursuant to its constitution, an "Administrative Officer" who in turn, pursuant to the laws of the union, appointed a "Regional Director" to assist, work under, and report directly to, said "Administrative Officer" of the International Union in carrying out the specific duties of the International Union as expressly set forth in the constitution thereof. Neither San Soucie, Murrin, Cors, nor Jones was appointed in any instance to any of the offices held by either of them; as stated heretofore, each was elected directly by the members of their respective local unions, or elected by the delegates in the other organizations of the various organizations in which they hold office.

The *Claycraft* case is cited and rather extensively referred to in the case of *Farnsworth & Chambers Co., Inc. v. Sheet Metal Workers International Association, Local 49, et al.* (D. C. N. M. 1954), 125 F. Supp. 830.

Commencing at page 831 in the *Farnsworth* case, it is stated:

> "The action arises under the Act of June 23, 1947, Title 3, section 303, 61 Stat. 158; Title 29 U. S. C. A., section 187, the Labor Management Relations Act of 1947, commonly referred to as the Taft-Hartley Act.
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> "Local 49 is a voluntary association, composed of members engaged in the craft of sheet metal workers, and holding a charter bearing date of January 7, 1953, from the Sheet Metal Workers International Association. The local 49 is composed of eligible building trade mechanics located within some twenty-two New Mexico Counties, with headquarters at Albuquerque, New Mexico. The International Association is a voluntary, unincorporated association, with general offices at 642 Transportation Building, Washington, D. C.
>
> • • • • •

"Two very interesting cases bear upon the matter in question. One is *Claycraft Co.* v. *United Mine Workers of America*, 6 Cir., 204 F. 2d 600. This case was decided subsequent to the effective date of the Labor Management Relations Act of 1947. This deals with service upon a director of Region 34 of District 50 of the United Mine Workers of America. District 50, it should be pointed out, had no constitution. An administrative officer was appointed by the United Mine Workers International, who, in turn, appointed the regional directors. Regional directorships, under the International constitution, could be established or abolished, at the discretion of the administrative officer of the District. The regional directors of District 50, were required to make weekly written reports directly to the administrative officer on all matters of policy and organizational activities. • • •

• • • • •

"Section 185 of Title 29 U. S. C. A. together with Rule 17 (b) of the Federal Rules of Civil Procedure, 28 U. S. C. A., allow an action against a Union in its common name, and each declares that proper service may be had by service upon any officer or agent of the Union. Rule 4 (d) (3), Federal Rules of Civil Procedure, provide the manner of securing service on unincorporated associations, authorizing service to be made by delivering a copy of the summons and complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process. Recourse must also be had to Rule 4 (d) (1), *supra*, providing, in effect, that service is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States. It is this last rule that focuses our attention upon Section 185, Title 29 U. S. C. A. Providing, as the last-mentioned Act does, that the service of a summons upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization, service by the Marshal, in this District, upon Brooks, as the business agent of Local 49, is good and sufficient service upon

that Labor Union. Inasmuch, however, as there is not a sufficient connection between Local 49 and the Sheet Metal Workers International Association, and inasmuch as this Court has held that the Local, on the one hand, and the International Association on the other, are each separate and autonomous legal entities, service upon Brooks, with the attempt to join by service as a defendant herein, an International Association is, ineffective, and the attempted service of the summons and the return of service of summons is hereby quashed * * *."

In the *Operative Plasterers* case, the court merely held (a) that under the North Carolina law, an unincorporated association could be sued as an entity and (b) that the trial court had *found as a fact* that a certain *local officer was an agent* or representative *of the International Union;* the Court of Appeals for the District of Columbia held there was substantial evidence to sustain the *finding* of the District Court; as can be noted, the case of *Operative Plasterers* is not at all similar to the one at bar, and furthermore, in the proceeding before this Court, the plaintiff is predicating its action and service of process thereunder, upon special statutory provisions, which provide the manner, and upon whom, service of process may be had, in so far as labor organizations are concerned.

The cases as cited by the Petitioner do not sustain its position.

However, in addition to the above, there are several other authorities clearly sustaining the decision of the District Court (166 F. Supp. 885) and the Court of Appeals (268 F. 2d 871).

In the case of *Daily Review Corporation* v. *International Typographical Union, et al.* (D. C. E. D. N. Y.—1949), 9 F. R. D. 295; 17 Labor Cases, ¶ 65,292; 24 LRRM 2179, the plaintiff sued the International Typographical Union and Local 915 thereof, under provisions of the Labor-Manage-

ment Relations Act of 1947; Local Union No. 915 was served by process upon John J. Byrnes, its President, in New York; summons was served upon the International Union at its principal office in Indianapolis, Indiana; with respect to such facts, the District Court of New York stated the following:

> "* * * The plaintiff now claims that if such service in Indiana is held insufficient to give this Court jurisdiction over the International, nevertheless jurisdiction had in fact been given to this Court on the theory that this Local Union in New York was a subordinate member of the International, that the International completely dominates all its subordinate unions, and that the president of the defendant Local Union, or possibly the Local Union itself, was an officer or an agent of the defendant International, located within this state.
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> "In the absence of clear proof that Byrnes, the president of the defendant Local, was also an authorized agent of the International, or an officer thereof, I do not agree that his mere official capacity in this defendant Local made him an agent of the International, or that the defendant Local itself, was such an agent authorized, or considered to be a representative of the defendant International within this state, so as to make service upon it a service upon the defendant International."

In the case of *Axel Newman Heating and Plumbing Company* v. *Sheet Metal Workers International Association and Local Union No. 76* (D. C. D. of Minn.—1955) 29 Labor Cases, ¶ 69,557; 37 LRRM 2038, the action was brought under the provisions of Section 301 and 303 of the Labor-Management Relations Act of 1947: E. G. Winter was a member of the International and of the Local Union, and also the Business Agent or Representative of the Local; he was served with process on behalf of the Local, to which no objection was raised, was also served with process

on behalf of the International, as an "agent" of the International within the meaning of Section 301(d) of the Act. After referring extensively to the constitution of the International, and after referring to its officers, the Local Union, and its powers, etc., the District Court of Minnesota, stated the following:

"'1. Service of process upon a labor organization for purposes of suits brought under Section 301 and 303 of the Taft-Hartley Act must, pursuant to Section 301(d) of the Act, be effected by service upon an officer or agent of such labor organization.

"2. An 'agent' of a labor organization within the meaning of Section 301(d) of the Act, is a person who is authorized to act for, in behalf of, or in the name of such labor organization.

"3. E. C. Winter is not an 'agent' of the International, within the meaning of Section 301(d) of the Act, by virtue of his membership in the International.

"4. E. C. Winter is not an 'agent' of the International within the meaning of Section 301(d) of the Act, by virtue of his membership in the Local.

"5. The local is a self-governing unincorporated association whose officers and agents are elected and compensated by and are authorized to act for, on behalf of, and in the name of its own membership. Those said officers and agents are not, by virtue of such status, agents or sub-agents of the International in the sense that they may act for, in behalf of, or in the name of the International and by their actions bind the International.

"6. E. G. Winter is not an 'agent' of the International within the meaning of Section 301(d) by virtue of his being the incumbent of the office of Business Agent or Representative of the Local.

"7. E. C. Winter is not an 'agent' of the International within the meaning of Section 301(d) of the Act by virtue of any special appointment to such capacity by the General President or any other general officer of the International."

The National Labor Relations Board has also rendered a rather recent decision on this same subject matter; in the case of *International Brotherhood of Electrical Workers (AFL-CIO), and International Brotherhood of Electrical Workers, Local 5 (AFL-CIO) Franklin Electric Construction Co., Inc.* (July 24, 1958), 121 N. L. R. B. No. 26; 5 CCH Labor Law Reporter, ¶ 55,577; 42 LRRM 1301-3, the Board stated the following:

> "The overwhelming weight of judicial authority, including the Supreme Court of the United States, is that a local union is a legal entity apart from its international and that it is not a mere branch or arm of the latter. (Footnote 3. *Coronado Co.* v. *United Mine Workers*, 268 U. S. 295, 299; *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344, 393; *United Construction Workers* v. *Haislip Baking Company*, 223 F. 2d 872 (C. A. 4); cert. den. 350 U. S. 847; *Di Georgio Fruit Corp.* v. *N. L. R. B.*, 191 F. 2d 642 (C. A. D. C.); *Pennsylvania Mining Co.* v. *United Mine Workers*, 28 F. 2d 851 (C. A. 8), cert. den. 279 U. S. 841; *Mile Branch Coal Co.* v. *United Mine Workers* (D. C. D. C.), 42 LRRM 2169, May 20, 1958; *Axel Newman Co.* v. *Sheet Metal Workers*, 3 Utah 2d 377, 277 P. 2d 922; *Ford* v. *United Brotherhood of Carpenters*, 315 P. 2d 299 (Wash.); *Harker* v. *McKissock*, 7 N. J. 323; 81 A. 2d 480; *De Maio* v. *Local 80-A, United Packinghouse Workers*, 29 *N. J. Super.* 341, 102 A. 2d 480; *Seidner* v. *Fish*, 131 Misc. 203, 226 N. Y. S. 411.) That too has been the position of the Board * * *."

This particular question has also been researched on what might be termed a "reverse basis", that is, can an International Union be brought into court and thereby have any effective action rendered against one of its affiliated local unions, that is not actually a party to the litigation; the answer to such has been decided in the negative.

*Hutcheson, et al.* v. *Hanson* (1951), 121 Ind. App. 546, 98 N. E. (2d) 688-92-3.

*Hanson, as a member of the United Brotherhood of Carpenters and Joiners of America* v. *Hutcheson, et al.* (C. A. 7, 1954), 217 F. (2d) 171-4-5-6.

*Hanson* v. *Hutcheson, et al.* (1956), 127 Ind. App. 50, 134 N. E. (2d) 564-66.

## VIII.

## CONCLUSION.

For the reasons stated above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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## APPENDIX.

Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer

or agent of a local organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, 3:17 p. m., E. D. T., c. 120, Title III, Sec. 301, 61 Stat. 156 (29 U. S. C., Sec. 185).

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Sec. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has

been certified as the representative of such employees under the provisions of section 159 of this title;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under sub-chapter II of this chapter.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit. June 23, 1947, 3:17 p. m. E. D. T., c. 120, Title III, Sec. 303, 61 Stat. 158 (29 U. S. C., Sec. 187).